IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CWP No. 212 of 1999

Date of decision: 14.12.2006

Sant Ram	….Petitioner
Versus	
State of H P & others	….. Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, J.

The Hon'ble Mr Justice Surinder Singh,J.

Whether approved for reporting ?[1]

For the Petitioner	**Mr Rajiv Sharma, Senior Advocate, with Mr Surinder Sharma, Advocate.**
For the Respondent	**Mr Ram Murti Bisht, Deputy Advocate General.**

Deepak Gupta,J (Oral)

The dispute in the present writ petition is very short. Admittedly, the petitioner was working as Work Charge Mistri with the respondents. The retirement age of a work charge Mistri is 60 years. However, the petitioner was retired, on attaining the age of 58 years. He challenged his retirement before the learned H P Administrative Tribunal. The learned Tribunal held that merely because the post of work charged work Mistri was

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ?***

clubbed with the post of work charged work Inspector for the purpose of pay scale did not mean that the retirement age of the petitioner was reduced from 60 years to 58 years. Consequently, he was ordered to be reinstated. However, it was ordered that since the petitioner has not worked, he shall not be paid any back wages for the period between his illegal superannuation to his reinstatement but such period shall be counted towards his pay fixation and length of service for retiral benefits.

By means of this petition, the petitioner has challenged the latter part of the order whereby benefits of wages, for the period when he was out of job i.e. 1 year 7 months and 11 days were not paid to him.

We have heard the learned counsel for the parties.

Admittedly, in the present case the petitioner was not at all fault. The stand of the State is that its action was taken bonafide. Since the petitioner was given the pay scale of Class III post of work Inspector for which the retirement age is 58 years, the State bonafide was of the view that the petitioner will superannuate on attaining

the age of 58 years and, therefore, the order of retirement was passed.

Even if the stand of the State is accepted, that their action is bonafide, we are of the opinion that in the present case the petitioner was not at all at fault and cannot be penalized for the mistake of the State. The present case is not a case of termination of service of the petitioner on any ground. He had a legal right to remain in service till he attained the age of superannuation. He could not have been superannuated except by way of punishment. The petitioner in our opinion could not have been denied the wages for the period for which he did not work in the facts and circumstances of the present case.

Mr Bisht, learned Deputy Advocate General has cited a number of judgments of the Apex court, relating to payment of back wages. All these cases relate to persons, whose services were terminated. The present case falls entirely in a different category. We also cannot lose sight of the fact that in this case the petitioner immediately after his illegal retirement moved the learned Tribunal and in fact the case was decided before he attained the age of retirement. Therefore, we feel that this

is a case where the petitioner is entitled to back wages for the period during which he remained out of service due to illegal order of superannuation. We, therefore, direct the respondents to pay the back wages to the petitioner with interest at the rate of 6% per annum. However, while computing the amount, payable to the petitioner, the respondents shall be at liberty to take into consideration the pension and other retiral benefits, if any, paid to the petitioner at the time of his illegal retirement. The writ petition is disposed of accordingly.

(Deepak Gupta),J.

December 14, 2006 (Surinder Singh),J.
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